IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C.No.812/2005

Krishan Kumar & Ors. ..... Petitioners
! through: Mr. B.S.Rana, Advocate

VERSUS

$ State & Anr. .....Respondents
^ through: Mr. Pawan Sharma, Advocate for State

% **D**ATE OF DECISION: 29-10-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. Petitioners are aggrieved by the order dated 7.6.2001 summoning them to face trial for offences under Section 452/323/506/34/149 IPC.

2. On 27.10.1997, the fateful day, at about 10.00 pm an altercation had taken place. This is an admitted fact between the complainant and the petitioners.

3. One Hukam Chand had died in the altercation. Another party had been injured. The injured lodged a complaint

pursuant whereto FIR No.397/97 under Sections 302/307/323/34 IPC was registered.

4. 4 persons including one Dharmender, husband of the complainant Meenakshi was also put up for trial as an accused.

5. Rival versions as to where and in what manner the incident took place was projected by the prosecution and the defence. Defence examined Meenakshi as DW-1.

6. Vide judgment and order dated 20.11.2000, learned Additional Sessions Judge convicted the accused persons which included Dharmender husband of Meenakshi for having committed an offence under Section 302 IPC as also under Section 307 IPC.

7. Needless to state, conviction was with the aid of Section 34 IPC.

8. The judgment and order dated 20.11.2000 passed by the learned Additional Sessions Judge reveals that while considering the testimony of Meenakshi, in para 42, recording reasons in support of the finding, Meenakshi, DW-1 was held as not to be a truthful witness.

9. On merits, version projected by the defence was held not to be believable. Version projected by the prosecution

was accepted by the learned Additional Sessions Judge.

10. Meenakshi has invoked jurisdiction under Section 200 of the Code of Criminal Procedure. She has filed a private complaint against the petitioners. Order dated 7.6.2001 summons the petitioners to face trial for offences under Sections 452/323/506/34 IPC.

11. I have perused the complaint filed by Meenakshi.

12. I have also perused the testimony of Meenakshi when she appeared as DW-1 at the Sessions' trial in FIR No.397/97. The allegations in the complaint are pari materia with her testimony when she deposed in examination-in-chief before the learned Additional Sessions Judge.

13. In my opinion, the petition has to succeed for the simple reason, the version of the complainant on which the private complaint is based was projected as a defence when husband of the complainant and 3 other persons were put up for trial as accused in FIR No.397/97. Learned Additional Sessions Judge disbelieved the version of the complainant.

14. Petitioners cannot be prosecuted in relation to facts sought to be proved by the complainant which facts have been disbelieved by the superior court.

15. Petition is allowed. Order dated 7.6.2001 is

quashed.

16. No costs.

October 29, 2007 **PRADEEP NANDRAJOG, J.**
dk